

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 72 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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LAXMIBEN D/O GALABHAI RANCHOD BHAI

Versus

RAMABHAI RANCHODBHAI

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Appearance:

MR JC VYAS for Petitioner

MR RK MISHRA for Respondent No. 1

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 25/03/97

ORAL JUDGEMENT

The present Appeal From Order is at the stage of admission. Learned Counsel Mr.Vyas for the appellant and learned Counsel Mr. Mishra for the opponents-original defendants, who is on a Caveat, have been heard. The appeal is admitted and is taken up for final hearing.

The facts are not much in dispute. About nine pieces of agricultural lands, situated at village Motera, under the Gandhinagar Taluka of the Gandhinagar District, originally were of the ownership of one Ranchhodbhai, the deceased. The said deceased had left behind him three sons, namely, Galabhai, Kuberbhai and Ramabhai. Galabhai is also no more and the appellant-plaintiff, Laxmiben happens to be his sole heir. It is the case of Laxmiben, the appellant-plaintiff that, she has got 1/3rd share in all the lands situated at village Motera. She has gone before the Court below with a prayer of partition by metes and bounds. During the pendency of the suit, the application at Exh.5 came to be submitted by the appellant-plaintiff, saying that, during the pendency of the trial, the opponents herein should be prevented from disposing of or alienate in any manner, the said properties. The application at Exh.5 came to be dismissed by the Court below, after hearing both the sides. The said orders dated January 8, 1997 are in challenge in the present appeal.

Learned Counsel Mr.Vyas who appears on behalf of the appellant-plaintiff urges before me that, the orders of the Court below are not tenable in law because, at any rate, Galabhai was having 1/3rd share in the properties left behind by Ranchhodbhai and upon the death of Galabhai, Laxmiben, the appellant-plaintiff has succeeded to the share of Galabhai and, therefore, she apparently has got 1/3rd share in the disputed lands. This contention is being sought to be combatted by learned Counsel Mr.Mishra by saying that, though, after the death of Galabhai, the name of Laxmiben, the appellant-plaintiff came to be mutated in the revenue record, there was a statement coming out from Laxmiben, at a later juncture, saying that she relinquishes all her rights in the said lands. Learned Counsel Mr.Mishra, therefore, urges that, the Court below was perfectly justified in coming to the conclusion that all the interest which Laxmiben had in the above said properties came to be relinquished in favour of the rest of the persons. This is one of the considerations which weighed heavily before the Court below.

The Court below was also of the view that, certain Record-of-Rights Proceedings are pending before the Secretary (Appeals) to the Government of Gujarat and that, till the above said proceedings are concluded, it would not be open for the appellant-plaintiff to urge that she has got a right or share in the lands under dispute. This view of the Court below is erroneous because, ultimately, the revenue entries are to be made

in the revenue records as per the decision to be rendered by the Civil forum. The revenue entries have got a probative value and that, the entries in the revenue records could be substituted by the later entries as per the decree of the Civil forum. Therefore, it appears that, the Court below was at an error in saying that, unless and until the RTS proceedings are decided, the plaintiff could not claim any relief on the basis of her say before the Civil forum.

The Court below was impressed upon by the case of the defendants that, there was a release deed duly executed by the appellant-plaintiff Laxmiben saying that, she relinquishes her rights in all the properties left behind by Ranchhodbhai and later on by Galabhai, her father. The simple answer to the contention of the defendants which was required to be accepted by the Court below was that, there could not be a relinquishment or the release in respect of a property of the value of more than Rs.100/- unless a duly executed release deed comes into existence. It cannot be seriously disputed that, a co-sharer in the property cannot relinquish the rights in favour of the other persons of any immovable property of the value of more than Rs.100/- unless there has been a valid release or relinquish deed duly executed and registered under the Registration Act. At any rate, this has not been done. Therefore, in my view, no reliance could have been placed upon the said statement allegedly given by Laxmiben before the revenue authorities. There is a special reason for buttressing this conclusion because, though, her name came to be deleted from the revenue records, on the basis of such a so-called release deed, the entries posted against Laxmiben are being challenged before the competent authority. Therefore, even the final outcome of the R.T.S. proceedings was being awaited.

Learned Counsel Mr.Mishra wanted to urge with vehemence that, there were certain earlier proceedings and that, everything has been settled under the said proceedings. On the scrutiny of the plaint, the decree and the orders of the High Court and those of the Supreme Court of the said proceedings, it appears very clearly that the State Government had initiated the proceedings against Galabhai, Kuberbhai and Ramabhai, the sons of deceased Ranchhodbhai and that the said proceedings were in respect of the entry of the tenure under which the said persons were holding the lands. The decree rendered by the competent Civil Court saying that the tenure should be the old one, has been accepted by the High Court and, ultimately, by the Supreme Court, but these

proceedings have nothing to do with the ascertainment or the relinquishment of the rights of the appellant-plaintiff Laxmiben, in the properties under dispute.

Learned Counsel Mr.Mishra wanted to urge that, in this litigation which had gone upto the Apex Court, there could be heavy expenditure which could have been borne by other persons excepting Laxmiben. It was also a say coming from the learned Counsel that, all the expenditure regarding the marriage and other social occasions qua Laxmiben could have been borne by other persons. I do not express any opinion in respect of this. Even if, factually, these things are correct, they by themselves would not be able to take away the right of the appellant-plaintiff Laxmiben in the properties which were inherited by her from her father Galabhai, who again inherited the same from deceased Ranchhodbhai.

Because of this, it appears that the Court below was not justified in outright rejection of the application at Exh.5. In my opinion, the interest of the appellant-plaintiff Laxmiben was required to be secured by making the necessary arrangement till the disposal of the suit.

Learned Counsel Mr.Mishra points out that, out of the said nine pieces of lands, the land bearing Survey Nos.122/2 and 122/3 have already been disposed of in favour of certain other persons. It would be appropriate, therefore, that the opponents should be restrained from transferring or alienating the other properties in any manner whatsoever, till the decision and disposal of the suit, by the trial Court.

The present Appeal From Order, therefore, succeeds to the above said extent and the same is hereby accordingly allowed. In the result, therefore, the orders of the Court below are hereby quashed and set aside and the application at Exh.5 presented by the appellant-plaintiff before the Court below is granted to the above said extent, by saying that, the opponents-defendants shall not, in any manner, transfer, alienate or encumber the properties in dispute excepting the two Survey Numbers which allegedly have been disposed of. The appeal is allowed with the above said orders, with no order as to costs.

Upon a plea coming from learned Counsel Mr.Mishra for the opponents, I would request the learned Civil Judge, Senior Division, Gandhinagar, to decide and

dispose of the matter as early as possible, and at any rate, within a period of one year hereof.

It should be also clarified that, the allowing of this appeal should not stand in the way of the opponents-defendants when they urge before the Court below that, the suit is not maintainable on various counts, and that such contention, if raised shall have to be decided according to law and on merits.

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